

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7672

Petition of the Vermont Telecommunications)
Authority for authority, pursuant to 30 V.S.A.)
§ 248a, to install a wireless communications)
facility in Bethel, Vermont)

Order entered: 10/28/2010

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") approves the petition filed by the Vermont Telecommunications Authority ("VTA" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Order implementing standards and procedures under this section ("Procedures Order")¹, and grants the Petitioner a certificate of public good ("CPG") authorizing the installation of a communications facility to be located in the Town of Bethel, Vermont (the "Project").

II. BACKGROUND

This case involves a petition and prefiled testimony filed by the Petitioner on September 20, 2010, requesting that the Board issue a CPG, pursuant to 30 V.S.A. § 248a, authorizing the construction of the facility identified above.

On October 11, 2010, GW Plastics, a company located in Bethel, Vermont, filed a letter with the Board stating "full and enthusiastic support" of the Project as a means of increasing cellular coverage in the Bethel area.

Also on October 11, 2010, Teri Haines, a neighboring landowner, filed a letter with the Board critical of the Board's notice and review procedure for this type of facility. Ms. Haines argues that the notice provided for these facilities "is inadequate and untimely" and that voicing her concerns regarding potential aesthetic and health impacts "would most likely be a waste of my time." Accordingly, Ms. Haines states that she does not plan to oppose the Project and has not requested a hearing in this matter.

1. *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*; Order issued August 14, 2009.

On October 12, 2010, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending that the Board issue a CPG for the Project without further evidence or hearings. The Department also expressed some concerns regarding the Petitioner's control of the proposed site, which is owned by the Town of Bethel, and the submission of final design plans for the Project.²

On October 14, 2010, the Town of Bethel filed a letter with the Board stating that the Town had entered into a lease agreement with the Petitioner that would allow for the construction and operation of a telecommunications facility at the Town-owned property.

On October 15, 2010, the Petitioner filed a letter with the Board stating that it would accept a condition in the CPG regarding final design plans for the telecommunications facility in order to address concerns raised by the Department.

No other comments or requests for hearing regarding the Project have been filed with the Board.

The Board has determined that the petition and prefiled testimony have effectively addressed the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

III. FINDINGS

1. The VTA is a public instrumentality of the State of Vermont created in 2007 in order to ensure, by the end of 2010, universal availability of broadband internet, cellular voice, and high-speed cellular data services throughout Vermont. Oliver pf. at 3.
2. The purpose of the proposed Project is to provide wireless telecommunications coverage to the currently unserved areas of Bethel and the surrounding region. Oliver pf. at 3.
3. The Project is proposed to be located on property owned by the Town of Bethel at 443 Sand Hill Road in Bethel. Oliver pf. at 3-4.

2. The letter also makes reference to "five new telecommunications facilities," although the application requests approval for only one facility.

4. The site is located on a parcel of land used by the Bethel Department of Public Works for equipment storage, maintenance and storage of materials such as road sand and salt. Construction related to the Project will require minimal grading and no clearing as the site is located in a bare open area. Access to the site is provided across the existing pavement onsite and from the edge of the pavement to the compound by a proposed 12' wide gravel road approximately 50' in length. No new grading or clearing for the access road is proposed as the road will follow the existing grade of the bare, flat area. Rystrom pf. at 2-4.

5. The telecommunications facility consists of a free-standing monopole tower, approximately 120' in height, and associated equipment shelters with backup power supply to be located within a proposed 50' by 50' compound. The VTA has entered into tentative agreements with two telecommunications providers that would allow these service providers to install their own equipment, including antennas and operating equipment, at the site to provide service to the surrounding area. Oliver pf. at 4.

6. Antennas will be located at heights of 75' and 120' feet on the tower. The antennas will include panel and dish type antennas. Rystrom pf. at 5.

State Telecommunications Policy

[30 V.S.A. § 248a(a)]

7. The Project is consistent with the goal of directing the benefits of improved telecommunications technology pursuant to 30 V.S.A. § 202c(b). The area to be covered by the Project is not currently served. The Project will provide telecommunications service to this currently unserved area of the state. Oliver pf. at 6-9.

**Aesthetics, Historical Sites, Air and Water Purity,
the Natural Environment, and Public Health and Safety**

[30 V.S.A. § 248a(c)(1)]

8. The Project will not have an undue adverse effect on aesthetics, historical sites, air and water purity, the natural environment, and the public health and safety. This finding is supported by findings 9-33 below, which are the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1)-(8) and (9)(k).

Outstanding Resource Waters, Headwaters

[10 V.S.A. §§ 1424a(d), 6086(a)(1)(A)]

9. The Project is located in a headwaters area because it is within the watershed of the Town of Bethel. However, the project will not adversely impact the watershed and will comply with all applicable environmental regulations with respect to watersheds. Green pf. at 3.

10. The Project is not located on or near any outstanding resource waters. Green pf. at 11.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

11. The Project will not result in undue water or air pollution. This finding is supported by findings 12-14, below.

12. Dust associated with construction vehicles and clearing/grading will be very minor and will be controlled at the site. Green pf. at 2.

13. The Project will not result in any discharge of water and will result in a disturbed area of less than one acre. As a result, a Stormwater Discharge Permit is not required for the Project. Green pf. at 4-5.

14. The Radio Frequency Radiation ("RFR") associated with the Project will meet all standards prescribed by the Federal Communications Commission ("FCC"). Chizmar pf. at 3; exh. 65.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

15. The Project does not involve disposal of wastes or injection of any material into ground water or wells. Green pf. at 4.

Water Conservation, Sufficiency of Water, and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(1)(C), (a)(2) and (3)]

16. The Project will not use water, with the exception of water for dust control, for its construction or operation. Green pf. at 5.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

17. The Project is not located in a floodway. Green pf. at 5-6.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

18. The Project will not be located on, adjacent to, or near any streams or other water bodies. Green pf. at 6.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

19. The Project is not located on a shoreline. Green pf. at 6.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

20. The Project is not located near any wetlands. Green pf. at 6-7.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

21. Due to the limited amount of earth disturbance required for the Project, the potential for erosion is minor. Temporary erosion-control measures including hay bales and silt fences will be installed prior to the start of construction. Rystrom pf. at 3.

Transportation System

[10 V.S.A. § 6086(a)(5)]

22. The Project will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports or airways, and other means of transportation existing or proposed. Traffic, following construction, will be limited to maintenance visits of up to six times per year. Oliver pf. at 4-5.

Educational Services

[10 V.S.A. § 6086(a)(6)]

23. The Project will not cause an unreasonable burden on the ability of a municipality to provide educational services. Educational services will not be impacted by the Project. Green pf. at 8.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

24. The Project will not place an unreasonable burden on the ability of the local government to provide municipal or governmental services. The Project will not require any additional municipal or governmental services. Green pf. at 8-9.

Aesthetics, Historical Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

25. The Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 26-32, below.

26. The Project will have adverse impacts on the aesthetics and scenic beauty of the area when viewed from certain vantage points. Kane pf. at 10-11.

27. The Project does not violate any clearly identified community standards contained in the relevant regional or town plans. Kane pf. at 15-21.

28. The Project would not be considered shocking or offensive to the average viewer. Kane pf. at 13-15.

29. The Petitioner has taken generally available steps to mitigate the aesthetic impacts associated with the Project. Kane pf. at 21-23

30. The only noise generated by the Project will be from air conditioning units when running and will be minimal. Rystrom pf. at 3.

31. The Project will have no impact on historic or archeological sites. Green pf. at 11.

32. There are no known endangered species sites or areas of necessary wildlife habitat in the Project area. Green pf. at 9-10.

Discussion

Based on the above findings, the Board finds that this project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called

Quechee Lakes decision. *Quechee Lakes Corporation*, #3W0411-EB and 3W0439-EB, dated January 13, 1986.

As required by this decision, it is first appropriate to determine if the impact of the project will be adverse. The project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine that such an impact would be "undue." Such a finding would be required if the project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if it would offend the sensibilities of the average person, or if generally available mitigating steps will not be taken to improve the harmony of the project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these three standards will be significantly informed by the overall societal benefits of the project.³

In this case, the Project will have an adverse effect on the aesthetics of the area when viewed from certain vantage points. However, the Project does not violate a clear written community standard and will not offend the sensibilities of the average person. In addition, the Petitioner has taken generally available steps, including siting the Project in an area with active industrial uses, which will require minimal clearing, and near existing access roads, to minimize the impact of the Project on its surroundings. Therefore, we conclude that the Project will not have an undue adverse impact on the aesthetics of the surrounding area.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

33. The Project will not unnecessarily or unreasonably endanger any public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to public investments. The Project will be located near the Bethel municipal garage, but will not affect the continued use of that facility. Green pf. at 10-11.

3. Consider, for example, a reduction in the need for power plant or transmission investments, or other social costs.

Town and Regional Plans

[30 V.S.A. § 248a(c)(2)]

34. By facilitating the expansion of telecommunications coverage in the area, the Project is consistent with the land conservation measures contained in the Bethel Town Plan and the Two-Rivers Ottauquechee Regional Plan. Kane pf. at 15-21.

State and Local Permits

[30 V.S.A. § 248a(d)]

35. The Project is consistent with existing permits relating to the parcel on which the Project site is to be located. Green pf. at 11-12.

IV. DISCUSSION & CONCLUSION

Pursuant to 30 V.S.A. §248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title.

Further, pursuant to the Procedures Order:

Unless the Board determines that an application raises a significant issue, it shall issue a final determination on an application within 90 days of its filing

With respect to the Board's notice and review process, we wish to assure Ms. Haines that the Board gives due consideration to all comments and concerns filed with the Board. Pursuant to the notice provisions in the Board's Procedures Order, the Applicant provided notice of the Project to all adjoining landowners, including Ms. Haines, 45 days in advance of filing a petition for approval of the project with the Board. The notice provides a description of the project and informs recipients that they can contact the Applicant with comments or questions regarding the Project. The notice also states that recipients will also have an opportunity to file comments with the Board once the petition is filed with the Board. Upon filing the petition with the Board, the

Applicant provided a second notice to all adjoining landowners, as required, stating that the petition had been filed and that recipients would have 21 days to file comments with the Board as to whether the Project raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248a. While we regret Ms. Haine's apparent misunderstanding regarding the Board's review process, we conclude that the required notice provides ample opportunity for those with concerns regarding a project to file comments or contact the Board or the Department to seek assistance in making those concerns known. In this case, Ms. Haines chose not to avail herself of this opportunity.

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of a communications facility in Bethel, Vermont, by the Vermont Telecommunications Authority, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

Dated at Montpelier, Vermont, this 28th day October, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 28, 2010

ATTEST: s/ Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.